IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14861 of 2003

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALSAD DISTRICT PANCHAYAT - Petitioner(s)

Versus

CHHAGANBAHI JANIYABHAI JANATHYA - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/02/2006

ORAL JUDGMENT

1. This petition is directed against the award dated 1st July 2003 passed by the Labour Court, Valsad, in Reference (LCB) No.668 of 1995 whereby the petitioner was directed to reinstate the respondent in service with

continuity and 75% back wages.

2. The short facts of the case are that the petitioner engaged the respondent as daily wager for the repairing works of different roads from 16.11.1987 to 31.10.1988. After the said work was over the respondent was not provided work. The respondent, therefore, raised a dispute which was referred to the Labour Court for adjudication. The Labour Court, after hearing the parties, passed the aforesaid award.

3. Though served and though the matter was adjourned from time to time to give opportunity, none appears for the respondent.

4. Mr. Munshaw for the petitioner submitted that the respondent has worked only for 161 days in all and he has not completed 240 days' service. He submitted that the Labour Court has passed the award on presumption that the burden of proving that the workman has completed work of 240 days' service is on the employer. He submitted that the Labour Court has, therefore, committed an error in passing the impugned order which requires to be quashed and set aside.

5. As a result of hearing and perusal of the record, it is evident that the petitioner has raised a contention before the Labour Court that the respondent workman has completed only 161 days and he has not completed 240 days' service. The petitioner has also given details about the days of work. However, without considering the same, the award has been passed merely on the ground that the petitioner has not produced any evidence to show that the respondent has not completed 240 days. In the case of Surendranagar District Panchayat V. Jethabhai Pitamberbhai, reported in (2005)8 SCC 450, it is held that in the context of completion of 240 days' continuous service, the burden of proof lies on workman and it is for the workman to adduce evidence apart from examining himself, to prove the said factum.

In the premises aforesaid, the award dated 1st July 2003 passed by the Labour Court, Valsad, in Reference (LCB) No.668 of 1995 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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